

**CITY OF WEST DES MOINES
BOARD OF ADJUSTMENT COMMUNICATION**

Meeting Date: February 20, 2013

Item: Permitted Conditional Use Permit – Abelardo's at West Glen – Metonic Real Estate Services – 5525 Mills Civic Parkway, Suite 100 – Allow use of existing drive-through window for restaurant
PC-2013-001/PC-001246-2013

Requested Action: Approval of a Permitted Conditional Use Permit

Case Advisor: Lynne Twedt 

Applicant's Request: Chris Pose, with Lillis, O'Malley, Olson, Manning, Pose & Van Dike, LLP, on behalf of the property owner, Metonic Real Estate Services, is requesting approval of a Permitted Conditional (PC) Use Permit to allow a restaurant to use an existing drive-thru window within the Avenue of the Arts District of West Glen Town Center.

History: On March 15, 2006, the Board of Adjustment approved a Permitted Conditional Use Permit for Custard's Last Stand (ice cream shop) to occupy the tenant space subject of this 2013 request and have a drive-thru window based on the drive-thru standards for a coffee shop. Per that approval, the drive-thru can be used for an ice cream shop or a coffee shop but not a restaurant. A restaurant can occupy this tenant space but they would not be able to use the drive-up window.

Staff Review and Comment: This request was distributed to other City departments and other agencies for their review and comment.

As indicated above, the 2006 approval allowed either a coffee or ice cream shop use of the drive-thru. The city's definition of a coffee shop is '*An establishment primarily selling coffee and tea products; the business has a limited menu within which nothing is considered a meal; there is little or no table service; the products are for consumption on or off premises; and it is characterized by a large carryout clientele. The sale of other food, beverages, or merchandise is incidental to the sale of the specialty beverage. Patrons generally order at a cash register and pay before they eat. This establishment is not a standalone facility, but is generally located within small shopping centers. (Ord. 1675, 1-30-2006).*' It could be argued that an ice cream shop would operate in much the same manner. There is no reference to the presence and/or use of a drive-thru within the definition; however, a 2006 amendment to city code modified the number of spaces required for a queuing lane for a drive-thru coffee shop to differentiate the use from standard drive-thru restaurants. City code requires coffee shops provide five car queuing spaces with four of the spaces out of the travel lane. Restaurants require eleven queuing spaces with minimum of five before the order station. The existing drive-thru could provide four queuing spaces outside of the travel lane and which do not block pedestrian movement along the street, but it will not be able to provide the minimum eleven queuing required of a restaurant without vehicles lining up on the Avenue of the Arts. The Avenue of the Arts is a one-way private street with on-street parking and serves as the primary vehicle connection for this portion of the West Glen development and West Glen's main entry drive off of Mills Civic Pkwy. The PUD does not allow separate ordering station from the pick-up window.

A traffic analysis was done. While the study findings anticipate that there will be traffic flow problems on the Avenue of the Arts at peak times due to vehicles queuing, the Avenue of the Arts is a private drive in the middle of a private development. Being such, there are no anticipated problems that would impact the public street network in the area. Any problems caused by the drive-thru would be the development's to negate. The restaurant owner has indicated that they anticipate their peak drive-thru times to be when the majority of the surrounding establishments are closed, thus the impact will be lessened. Staff suggested that the applicant explore restricting the drive-thru to certain hours; however, the restaurant owner has indicated that he feels it is too hard to restrict the drive-thru to certain hours.

Although this specific request was not discussed with the Development and Planning City Council Subcommittee, a similar request recently was. In that situation, Panera Bread located at 6740 University asked whether a drive-thru could be added to their establishment. Unlike this parcel in West Glen which does allow drive-throughs assuming they meet code requirements, per Panera's PUD and underlying zoning (PCP), drive-thrus associated with restaurants are not allowed. Panera's owner discussed changing the underlying zoning to a district that would allow for a drive-thru. Concern with this approach, which is also applicable in the West Glen situation, is that although Panera's operation may be such that only small portion of their business occurs at the drive-thru window (approx. 30-40%) and therefore the site could accommodate a drive-thru; if Panera were to vacate the site, another restaurant with a much higher percentage of sales and thus traffic volume via the drive-thru (e.g. Wendy's, Burger King, McDonalds) could go into the site. The site would not be able to accommodate such drive-thru traffic and would likely have a direct impact on the adjoining public street network. Due to the nature of Panera's business, the subcommittee was not necessarily opposed to Panera implementing a drive-thru. The committee recommended that limits such as maximum percentage of sales via drive-thru be specified in the PUD so that should drive-thru window sales increase and result in impacts on the surrounding roads, the city could close or otherwise restrict the drive-thru. Additionally, the subcommittee felt that having such parameters in place would prohibit specific high drive-thru volume tenants. This information was provided to this West Glen applicant.

The applicant has indicated that they would like to receive approval for unrestricted use of the drive-thru (no time allowances/limitations). To date, there has been no indication from the West Glen owners to restrict the percentage of sales allowed via the drive-thru.

Findings: The Permitted Conditional Use Permit to allow the use of the existing drive-thru by a fast-food restaurant was reviewed by various City departments. Based upon that review and the conditions of approval, the following findings have been made on the proposed project:

1. The proposed development and use is consistent with the West Des Moines Comprehensive Plan in that the project has been reviewed for consistency with the Comprehensive Plan. Based upon that review, a finding has been made that the proposed project is consistent with the Comprehensive Plan in that the project is consistent with all of the goals and policies of the Comprehensive Plan.
2. The proposed development and use does assure compatibility of property uses within the zone and general area in that this project was reviewed by various City Departments for compliance with the Zoning Ordinance; however, provision of vehicle queuing for the restaurant will be provided primarily on the adjacent private street.
3. All applicable standards and conditions have been imposed which protects the public health, safety and welfare in that this project was reviewed by various City Departments and public agencies for compliance with the various state and local regulations. Based upon that review a finding is made that the project has been adequately conditioned to protect the health, welfare, and safety of the community.
4. There is adequate on-site and off-site public infrastructure to support the proposed development in that this project was reviewed by various public agencies and City Departments and public utilities to ensure that either the petitioner will construct or the project has been conditioned to construct adequate public infrastructure to serve the development.
5. The proposed development and use has met the requirements contained in the City Code in that this project was reviewed by various City Departments and public agencies and the project has complied with or has been conditioned to comply with all City Code requirements.
6. The proposed development and use is in keeping with the scale and nature of the surrounding neighborhood in that the proposed project is consistent with the Zoning regulations and the Comprehensive Plan which designates this site as suitable for development such as that proposed by this project.

Noticing Information: On February 1, 2013, notice of the February 20, 2013 Board of Adjustment Public Hearing on this project was published in the Des Moines Register Community Section. Notice of this public hearing was also mailed to all surrounding property owners within 370 feet of the subject property on February 1, 2013.

Staff Recommendations and Conditions of Approval: Based upon the following review, a finding of consistency with the goals and policies of the Comprehensive Plan, and compliance with the findings necessary for approval, staff recommends the Board of Adjustment adopt a resolution for approval of the Permitted Conditional Use Permit to allow a fast-food restaurant use of the existing drive-thru for that site located at 5525 Mills Civic Parkway, subject to meeting all City Code requirements and the following:

1. The applicant acknowledging that prior to any exterior site or building modifications to the existing drive-thru facility, the applicant is required to submit and receive approval of a Minor Modification Site Plan application by the appropriate approval body;
2. The applicant agreeing to close the drive-through should operation of the drive-thru be determined to be causing traffic issues on either Mills Civic Parkway or S Prairie View Drive;
3. The applicant acknowledging and agreeing that any pavement markings or signage necessary to facilitate traffic for the drive-thru shall be consistent with the Manual on Uniform Traffic Control Devices (MUTCD, Federal highway Administration, 2009 Edition); and
4. The applicant obtaining the necessary sign permits prior to the implementation of any new signage associated with the drive-thru.

Property Owner/Applicant: Metonic Real Estate Services
16910 Frances Street, Suite 200
Omaha, NE 68130
Attn: Jeremy Smith
jeremy@metonicres.com

Applicant's Representative: Christopher Pose
Lillis O'Malley Olson Manning Pose & Van Dike, LLP
317 6th Avenue, Suite 300
Des Moines, IA 50309
cpose@lolaw.com

Attachments:

Attachment A	Resolution
Attachment B	Location Map
Attachment C	Aerial of Existing Site

Prepared by: L. Twedt Development Services PO Box 65320 West Des Moines IA 50265-0320 515-222-3620
When Recorded, Return to: City Clerk, City of West Des Moines PO Box 65320 West Des Moines IA 50265-0320

RESOLUTION

A RESOLUTION OF THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES, APPROVING A PERMITTED CONDITIONAL USE PERMIT (PC-2013-001/PC-001246-2013) TO ALLOW USE OF AN EXISTING DRIVE-THROUGH BY A FAST-FOOD RESTAURANT

WHEREAS, pursuant to the provisions of Title 9, Chapter 1 et seq, of the West Des Moines Municipal Code, the applicant, Metonic Real Estate Services, has requested approval of a Permitted Conditional Use permit to allow the use of an existing drive-thru by a fast-food restaurant at the building located at 5525 Mills Civic Parkway, Suite 100, and legally described as follows:

Legal Description of Property

**Lot 1, West Glen Town Center Plat 3, an official plat within
the City of West Des Moines, Polk County, Iowa.**

WHEREAS, studies and investigations were made, and staff reports and recommendations were submitted which is made a part of this record and herein incorporated by reference;

WHEREAS, on February 20, 2013, the Board of Adjustment held a duly-noticed public hearing to consider the application for Permitted Conditional Use Permit (PC-2013-001/PC-001246-2013);

NOW, THEREFORE, THE BOARD OF ADJUSTMENT OF THE CITY OF WEST DES MOINES DOES RESOLVE AS FOLLOWS:

SECTION 1. The findings, for approval, in the staff report, dated February 20, 2013, or as amended orally at the Board of Adjustment hearing of February 20, 2013, are adopted.

SECTION 2. PERMITTED CONDITIONAL USE PERMIT (PC-2013-001/PC-001246-2013) to allow use of an existing drive-through by a fast-food restaurant at the building located at 5525 Mills Civic Parkway, Suite 100 is approved, subject to compliance with all the conditions in the staff report, dated February 20, 2013, including conditions added at the Hearing, and attached hereto as Exhibit "A", if any. Violation of any such conditions shall be grounds for revocation of the entitlement, as well as any other remedy which is available to the City.

PASSED AND ADOPTED on February 20, 2013.

Acting Chairperson, Board of Adjustment

ATTEST:

Recording Secretary

I HEREBY CERTIFY that the foregoing resolution was duly adopted by the Board of Adjustment for the City of West Des Moines, Iowa, at a regular meeting held on February 20, 2013, by the following vote:

AYES:

NAYS:

ABSTAIN:

ABSENT:

ATTEST:

Recording Secretary

**Exhibit A:
Conditions of Approval**

1. The applicant acknowledging that prior to any exterior site or building modifications to the existing drive-thru facility, the applicant is required to submit and receive approval of a Minor Modification Site Plan application by the appropriate approval body;
2. The applicant agreeing to close the drive-thru should operation of the drive-thru be determined to be causing traffic issues on either Mills Civic Parkway or S Prairie View Drive;
3. The applicant acknowledging and agreeing that any pavement markings or signage necessary to facilitate traffic for the drive-thru shall be consistent with the Manual on Uniform Traffic Control Devices (MUTCD, Federal highway Administration, 2009 Edition); and
4. The applicant obtaining the necessary sign permits prior to the implementation of any new signage associated with the drive-thru.



